

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.A.No.1 OF 2019

IN/AND

M.A.C.M.A. No.319 OF 2008

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the order and decree dated 27.08.2007 passed in O.P.No.1504 of 2004 by the III Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the trial Court').

2. The brief facts of the case are that on 24.03.2004, while the appellant was traveling on his scooter, in front of 'Sitar Hotel' the driver of the DCM Van bearing No.AP9W 6508 driven it in a rash and negligent manner, hit the scooter and ran over the appellant. In the said accident, the appellant sustained severe injuries apart from fracture to both bones of right leg. The appellant originally claimed compensation against respondent Nos.1 and 2, owner and insurer of the crime vehicle, respectively, for an amount of Rs.7,00,000/-, but restricted the same to Rs.2,50,000/- during the pendency of petition.

3. Before the trial Court, the second respondent filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the evidence produced by the parties, the trial Court held that as the appellant did not file the driving licence and as he failed to examine the driver of the offending vehicle, there is contributory negligence on the part of the appellant and fixed the

liability of the respondents @ 50%. With regard to compensation, the trial Court granted total compensation of Rs.1,75,000/- i.e., Rs.30,000/- towards Fracture to both bones of leg, Rs.1,00,000/- towards Deformity coupled with disability, Rs.10,000/- towards Pain and suffering, Rs.25,000/- towards normal medical expenditure & Rs.10,000/- towards food, transport and assistance, and directed the respondents to pay a sum of Rs.87,500/- (Rs.1,75,000/- X 50%) to the appellant. Dissatisfied with the quantum of compensation, the appellant filed the present appeal seeking enhancement of the same.

5. Heard.

6. Sri Kasireddy Jagathpal Reddy, learned counsel for the appellant submits that the appellant/claimant had filed a petition in IA.No.1 of 2019 to receive additional document i.e., Disability Certificate No.ID 16210810030000036, dated 03.09.2014, issued by the Medical Board, Gandhi Hospital, Secunderabad, in the name of the appellant, to show that he had sustained disability of 59% with a request to mark the same as Ex.A-14 before the trial Court.

7. Sri Katta Laxmi Prasad, learned Standing Counsel appearing for the 2nd respondent/insurance company, objected for the same contending that it is not clear as to whether the disability certificate pertains to the accident occurred in the year 2004 and without adducing the evidence on the same before the trial Court, it is not proper on the part of the appellant to place the same on record in the appeal.

8. In view of the rival contentions raised by both the learned counsel with regard to the genuinity of the disability certificate, I am inclined to remand the matter to the trial Court for conducting fresh trial and to dispose of the matter by taking the disability certificate into consideration, if the appellant proves the genuinity of the same. Since the matter pertains to the year 2004, priority needs to be given and the trial Court is directed to dispose of the said O.P. on merits, within a period of six (06) months from the date of receipt of a copy of this order, after giving reasonable opportunity to both sides.

9. With the above observations, I.A.No.1 of 2019 as well as MACMA.No.319 of 2008 are allowed setting aside the order and decree dated 27.08.2007 in O.P.No.1504 of 2004 passed by the trial Court and remanding the matter to the trial Court to dispose of the said O.P. on merits, within a period of six (06) months from the date of receipt of a copy of this order, after giving reasonable opportunity to both sides. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 8th July, 2019

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